

**REMARKS**

In response to the Restriction Requirement, Applicant provisionally elects, with traverse, Group I (claims 45-84).

Applicant respectfully submits that the restriction requirement set forth in the Office Action is improper.

The Examiner asserted that Group I and Group II are related as process and apparatus for its practice. Group I is directed to a method for abating contamination, with specific recited steps. Group II is directed to a system for abating contamination, comprising structures that carry out such recited steps. Specifically, the method of Group I comprises the steps of "exhausting contaminated air in the cavity in a controlled manner through one or more outlet openings in the structure that are in flow communication with the cavity; and treating a contaminated surface in the cavity in a manner that is substantially non-destructive to the contaminated surface." (See claim 1) The apparatus of Group II comprises the structure of: "a first device exhausting contaminated air in the cavity in a controlled manner through one or more outlet openings in the structure that are in flow communication with the cavity; and a second device treating a contaminated surface in the cavity in a manner that is substantially non-destructive to the contaminated surface." (See claim 85) Essentially, the steps of the method and the steps that the structure is configured to carry out are verbatim.

As the Examiner noted, the inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP 806.05(e)). The Examiner, however, asserted that in the instant case, the apparatus may

be used in a method to paint a cavity or area in a structure. Such assertion is misplaced, relying on unreasonable speculations that are unfounded.

In the instant case, the preambles of the method claims and apparatus claims specifically recite contamination abatement, and the body of both set of claims also refers to exhausting contaminated air in the cavity and treatment of a contaminated surface in the cavity in a structure. Therefore, while the commercial apparatus having the structure of the system defined by Group II may be used to practice additional processes, such as painting of the cavity, but those additional processes would be additional to the recited system in Group II. The system would nevertheless perform each and every step recited in the method of Group I.

Further, Applicant notes that MPEP 806.05(e) does not require using unbounded imagination and speculations to seek hypothetical methods in which the apparatus may be used. Applicant respectfully submits that the scope of inquiry to seek "materially different" processes should reasonably be limited to those processes that may reasonably be substituted with the recited process of Group I. Otherwise, applying the Examiner's reasoning, one could have used the system to carry out many other processes, such as flooding the interior of a dry wall with sea water, for example.

According to MPEP 806.05(e), "[t]he burden is on the examiner to provide reasonable examples that recite material differences." Here, the Examiner has not met his burden.

Even if the recited Group II apparatus is deemed to be reasonably usable to paint a cavity in a structure, Applicant respectfully submits that the apparatus nonetheless is practicing the method of Group I. Applicant submits that painting is not inconsistent with treating a contaminated surface in the cavity. One can argue that the contaminated surface would be

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covered by the paint, thereby being treated in some manner, to an extent depending on the composition of the paint. The materiality requirement is therefore not satisfied.

MPEP 806.05(e) provides "[i]f applicant proves or provides convincing argument that there is no material difference, the burden is on the examiner to document another materially different apparatus, or withdraw the requirement, or provide a proper basis to maintain the present restriction of Groups I & II.

Should the Examiner maintain the restrictions, Applicant reserves the right to file a divisional application on the non-elected Group II (claims 85 – 93) at a later date.

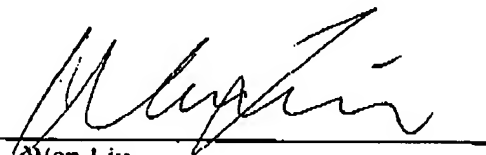
### CONCLUSION

For the foregoing reasons, the pending claims 45 to 93 should not be subject to restriction.

**The Examiner is invited to call the undersigned representative to discuss any outstanding issues that may not have been adequately addressed in this response.**

Respectfully submitted,

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